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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Joseph C. Spero, Magistrate Judge

San Francisco, California
Friday, December 18, 2020

TRANSCRIPT OF REMOTE VIDEOCONFERENCE PROCEEDINGS

APPEARANCES: (Appearances via Zoom videoconference.)

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Official Reporter, CSR No. 12219

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Also present:

Steve McMillan, Molly Treese, John Cowart,
Christian Klein.

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1 **Friday - December 18, 2020**

2 **9:29 a.m.**

3 **P R O C E E D I N G S**

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5 **THE CLERK:** The United States District Court for the
Northern District of California is now in session.

6 The Honorable Joseph C. Spero presiding.

7 Two housekeeping issues. First, I would like to introduce
8 to you our court reporter. Her name is Ruth Ekhaus, and so you
9 should identify yourself when you speak so she gets your name
10 accurately reflected on the transcript.

11 And the second has to do with recording of these
12 proceedings. Please note that persons granted remote access to
13 court proceedings are reminded of the general prohibition
14 against photographing, recording, and rebroadcasting of court
15 proceedings, including those held by telephone or
16 videoconference. See General Order 58 at paragraph 3.

17 Any recording of a court proceeding held by video or
18 teleconference, including screenshots or other visual copying
19 of a hearing, is absolutely prohibited. Violation of these
20 prohibitions may result in sanctions, including removal of
21 court-issued media credentials, restricted entry to future
22 hearings, or any other sanctions deemed necessary by the Court.

23 The first matter that we are calling is 18-cv-3670,
24 Teradata Corporation versus SAP.

25 I see some hands raised.

1 (Pause in proceedings.)

2 THE COURT: Yes, please raise your hand if you are
3 appearing on the Teradata versus SAP case.

4 (Pause in proceedings.)

5 THE CLERK: I still have a few more, Judge.

6 THE COURT: Not a problem.

7 (Pause in proceedings.)

8 THE CLERK: Judge, I believe -- okay.

9 Is there anybody in the attendee panel that I missed who
10 should be promoted to panelist for the Teradata matter?

11 MR. WHITAKER: No, it looks like everyone is here.

12 THE CLERK: Okay. Thank you, Mr. Whitaker.

13 Appearances, please, first starting with the plaintiff.

14 MR. WHITAKER: Certainly.

15 Good morning, Your Honor. This is Mark Whitaker with
16 Morrison & Foerster on behalf of Teradata. And with me today
17 is Steve McMillan, the CEO of Teradata; Molly Treese, the vice
18 president and general counsel for Teradata; John D. Cowart,
19 vice president and chief IP counsel for Teradata; and two
20 colleagues, my partners David Cross and Mary Prendergast, also
21 of Morrison & Foerster.

22 THE COURT: Thank you very much, and welcome.

23 MR. WHITAKER: Thank you.

24 MR. LANIER: Good morning, Your Honor. This is Greg
25 Lanier of Jones Days for SAP. I should be joined by my

1 partner, Nat Garrett; our co-counsel, Ken Gallo, of Paul Weiss.

2 Also on the phone or video should be Christian Klein. He
3 is the CEO of SAP SE, which is the ultimate entity for all of
4 the SAP parties. There are also members of SAP's legal team in
5 the gallery, but not promoted.

6 **THE COURT:** Okay. Welcome everyone.

7 I know this is an unusual order you received yesterday,
8 but these are unusual times.

9 I appreciate especially the representatives from the
10 parties -- Mr. McMillan, Mr. Klein, I appreciate your taking
11 the time from your busy schedules for this hearing, but there
12 is something I need to talk to you about.

13 You know, this is a very difficult time all over the
14 world, in the countries in which you are, in this country. And
15 there are lots of very important things going on. It makes it
16 all the more difficult to understand why lawyers and parties
17 waste each other's time and money -- not to mention the Court's
18 time -- on things that don't matter. And so that's the problem
19 that we're having.

20 I've had many hearings in this case on discovery, and each
21 time with respect to I would say -- maybe one possible
22 exception -- the parties have brought before me, at humongous
23 expense, issues for me to resolve that, A, probably don't
24 matter much in the case, and, B, should be resolved easily
25 between the lawyers and the clients.

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1 The most glaring example came yesterday, which is what
2 gave rise to this hearing. And that is the parties cannot
3 agree, out of a total of 140 hours for depositions, whether or
4 not, you know, five or 15 additional of those hours would be
5 devoted to depositions of corporate representatives.

6 The idea that -- and I should back up a little.

7 I know lots of the lawyers in this case. I have had them
8 in this case and on other cases. They are all, to a person,
9 exceptional lawyers. But sometimes we get caught up in our own
10 way of thinking about things, and it's particularly problematic
11 in patent-related cases.

12 But the idea that the parties can't work out that -- how
13 many hours for deposition, between five and 15 out of 140, it
14 just means there is something fundamentally wrong with how the
15 parties are approaching discovery in this case, which results
16 in an extra hundreds of thousands of dollars of cost to you,
17 wasted time for the Court.

18 And it's just intolerable that people can't step back and
19 have a little more perspective in a time when, you know, there
20 is a lack of foundation of things going on that demand our
21 attention and perspective. So that's why I asked you here.

22 Now, sometimes my reaction to what we call overzealous
23 litigation like this is to punish people, fine them. My
24 experience in large cases like this is that it is not only not
25 effective -- because who cares about a \$10,000 fine or a \$5,000

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1 fine in, you know, a hundred-million-dollar or a billion-dollar
2 case?

3 But it's also often counterproductive because then they
4 just think: Oh, this is an opportunity. We can scar the other
5 side by bringing another sanctions motion. So we bring another
6 sanction motion.

7 So it just leads to a parade of horribles that I'm trying
8 to avoid, which is wasting time on these matters.

9 So I have thought of a better idea. The better idea is
10 this: To bring this to your attention, as the individuals who
11 are in charge of these companies, so that you'll know what's
12 going on, number one.

13 And number two, to say, as I have advised the lawyers in
14 an order the first time I got this case, if this continues, I
15 will make the CEOs attend the meet-and-confer sessions with the
16 lawyers every time they occur.

17 And I understand that's a rather significant burden to
18 place on somebody -- some people who have as many
19 responsibilities as you do. And I do it in the -- I say that
20 that is what I may do in the hope that you can impress upon
21 your counsel, or whoever is -- in-house is calling the shots
22 with respect do this, that we don't want you fighting over
23 trivia.

24 If you have to bring a question of law to the Court --
25 like we had a dispute the other day about whether or not a

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1 particular way of doing discovery would violate German law or
2 Europe -- law of the European Union, that's a legitimate fight.

3 Fights over whether to search this location or that
4 location; fights about this search term or that search term;
5 fights about how many hours; and similar fights -- and we have
6 had many, many, many of them -- are not. Okay?

7 You know, if -- in the end, I will resolve whatever needs
8 to be resolved, but I think it is my job to make sure that the
9 parties comply with Rule 26 mandate, that they do their utmost
10 to resolve the disputes without the necessity of court
11 invention. So that's why I'm doing this, and to advise you
12 that that is -- I'm not taking that step now, but that will be
13 the next step.

14 I have only had to do that a couple of times in my
15 21 years as a judge, and I certainly don't want to do it in
16 this case. I would feel particularly bad having to do it in
17 this case because of my respect for the lawyers on both sides,
18 who I have had in many cases. But it's getting out of hand,
19 and I'm just not going to do it.

20 The other alternative is to suggest that we have a special
21 master and make you pay for it. That, to my mind, is the act
22 of a judge in desperation. And so I'm -- I may get there, but
23 I'm not there yet, because it's -- I say it's desperation
24 because it means that you're throwing up your hands and there
25 is no way that you can get it under control. And I'm not

1 satisfied with -- just because of what I know of the lawyers in
2 this, that we're at that point yet.

3 I think you can get this under control.

4 So that's all I wanted to say to you. I'm happy to take
5 any questions you may have and answer them to the best I can;
6 but I wanted to make sure you understood where I'm coming from
7 and where I might be going.

8 So are there any questions that anyone would like to ask?

9 **MR. WHITAKER:** Your Honor, this is Mark Whitaker for
10 Teradata.

11 We don't have any questions. Unless Mr. McMillan has a
12 question, counsel, does not have any questions.

13 **THE COURT:** Thank you.

14 **MR. LANIER:** Your Honor, this is Greg Lanier.

15 I'm sorry. I didn't mean to apologize if someone from
16 Teradata was speaking.

17 **MR. KLEIN:** No, Greg.

18 I just wanted to say, from our side, Your Honor, I fully
19 understand and respect your feedback and we will make sure that
20 we take this litigation very seriously, and take your feedback
21 too.

22 **THE COURT:** Thank you, I appreciate your being here,
23 Mr. Klein. I appreciate it, Mr. McMillan, Ms. Treese,
24 Mr. Cowart, Ms. Prendergast. I appreciate you all being here,
25 and let's see if we can't get this thing under control.

1 Okay. Thank you very much. That will be the end of this
2 hearing.

3 **MR. WHITAKER:** Thank you, Your Honor.

4 **MR. LANIER:** Thank you, Your Honor.

5 (Proceedings adjourned at 9:42 a.m.)

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8 **CERTIFICATE OF REPORTER**

9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled matter.

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12 DATE: Saturday, January 30, 2022

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17 Ruth Levine Ekhaus, RMR, RDR, FCRR, CSR No. 12219
18 Official Reporter, U.S. District Court

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